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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-1934

FLOYD H. DANIELS,

Appellant and Petitioner,

vs.

SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT, a public corporation; and JACK R. GILSTRAP, as General Manager of the SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT,

Appellees and Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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In Propria Persona

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Appellees and Respondents.

PETITION FOR WRIT OF CERTIORARI

Petitioner, FLOYD HIRAM DANIELS, petitions for Writ of Certiorari to review the Final Order of the United States Court of Appeals for the Ninth Circuit, entered on April 21, 1980, in which Petitioner's Petition For Rehearing filed March 25, 1980, was DENIED, and thereby affirming the United States District Court for the Central District of California; wherin, Petitioner's

Motion For Reconsideration, and Demand For Jury Trial was DENIED in a Final Order entered on April 10, 1978.

Petitioner alleges:

OPINIONS BELOW

The opinions delivered by the Courts below are appended to this Petition as follows:

1. The United States Court of Appeals for the Ninth Circuit's Final Order denying Petitioner's Petition For a Rehearing, Page #40 .

2. The Court of Appeals' Memorandum affirming the District Court's Final Order, Page # 41.

3. The District Court's Final Order denying Petitioner's Motion For Reconsideration, Page # 45.

4. The District Court's Judgment Dismissing Petitioner's "Complaint For Discriminatory Breach of Reinstatement For Damages and Payment For Lost Time", entered and filed on February 7, 1978, Page # 47.

JURISDICTION

The ground on which the jurisdiction of this Court is invoked is that the Court of Appeals has decided two (2)

important questions of federal law which should be settled by this Court.

1. The District Court's Final Order entered on April 10, 1978; in which Petitioner's Motion For Reconsideration; and Demand For Jury Trial, by barring this present Civil Rights Cause of Action by:

a. Statute of Limitations.

b. Doctrine of Rejudicata.

2. The Final Order of the Court of Appeals that was filed on April 21, 1980; in which, Petitioner's Petition For Rehearing was denied, and thereby, upholding the Court of Appeals' Memorandum, affirming the Final Order of the District Court.

3. The Court of Appeals, and the District Court have improperly denied Petitioner, as a United States Citizen the "Due Process of Law" and "Equal Protection of the Laws", as prescribed by the 14th Amendment of the Constitution of the United States of America, in this present Cause of Action.

The statutory provisions believed by Petitioner to confer on this Court's jurisdiction to review the judgment in question by Writ of Certiorari are Title 42, U.S.C., Sections 1981, and 1983; California Code of Civil Procedure, Section 338(1); and the 14th Amendment of the Constitution of the United States of America.

QUESTIONS PRESENTED

The questions presented for review are as follows:

A. Whether the District Court improperly denied Petitioner's Motion For Reconsideration by barring this present Cause of Action with the Doctrine of Res Judicata; and the Statute of Limitations.

B. Whether the Court of Appeals can affirm the above states Action by the District Court when the Court of Appeals improperly denied Petitioner's petition For Rehearing, by ignoring and refusing to address Itself to the Financial Transaction that happened on June 22, 1977, between Petitioner and Respondents; in which, the Court of Appeals has deprived Petitioner the "Due Process of Law", and the "Equal Protection of the Laws", as precribed by the 14th Amendment of the Constitution of the United States of America.

STATUTES INVOLVED

Statutes involved in this Action are Article #3, Section #2, Clause #1, of the United States' Constitution; the 14th Amendment of the Constitution of the United States; Title 42 U.S.C., Sections 1981, and 1983; 338(1), California Code of Civil Procedure.

The above stated Statutes will be

quoted later in this Petition when it is appropriate to do so.

CONCISE STATEMENT OF CASE

The facts material to the consideration of the questions presented are as follows:

Petitioner's "Complaint For Discriminatory Breach Of Reinstatement For Damages and Payment For Lost Time", filed in the District Court on November 2, 1977, is a New Cause of Action, with different Claim or Issue, is based upon a separate and distinct Act of unlawful racial discrimination in employment practice, committed by Respondents.

This Cause of Action commenced and started on June 21, 1977, when Petitioner visited Respondents' Headquarters at 425 South Main Street, Los Angeles, California; and presented a letter, dated January 28, 1971, from Respondents to Petitioner providing for the payment of $1,098.24; and Respondents and Petitioner's Union's Agreement for the reinstatement of Petitioner, as a bus operator. The above stated Letter was filed with Petitioner's Complaint on November 2, 1977, attached thereto as Exhibit I-1, (CT 50-51; and is filed in the Appendix as Exhibit "B", Page# 51.

As a result of Petitioner's visit to Respondents' Headquarters on June 21, 1977, Respondents mailed Petitioner a

check, dated June 22, 1977, in the amount of $1,098.24; which Petitioner received by U.S. Mail on June 24, 1977. The above stated Financial Transaction, and in accordance with Respondents' Letter of agreement, dated January 28, 1971, restored Petitioner's Reinstatement Rights as a bus operator. A photostat of the above said check was filed with the Complaint on November 2, 1977, attached thereto, as Exhibit "H-2",(CT 52); and is filed in the Appendix, as Exhibit "C", on Page # 52 .

As a result of Petitioner receiving the above stated check on June 24, 1977; and also the fact that there were material evidence of White Bus Operators Employees (Caucasian) of Respondents who were continuing to perform dual employment; Petitioner wrote a letter, dated June 25, 1977, and informed Respondents that Petitioner was available and ready for reinstatement as a Bus Operator; and requested Respondents to modify "agreement #2" of said letter from Respondents, dated January 28, 1971, by striking from "Agreement #2", as follows:

> "and that you sever your employment by the Los Angeles City School System."

Petitioner's above said letter, dated June 25, 1977, to Respondents was filed with the Complaint on November 2, 1977, attached thereto, as Exhibit I, (CT 48-49); and is filed in the Appendix, as Exhibit "D", Page # 53 .

Petitioner's request in the above stated said letter was denied in a letter from Respondents to Petitioner, dated July 12, 1977. This said letter was filed with the Complaint on November 2, 1977, attached thereto, as Exhibit "J", (CT 53).

Again, as the result of the above stated financial Transaction Fact, and Material Evidence of White Bus Operator Employees(Caucasian) of Respondent who continues to perform dual employment; Petitioner, on July 15, 1977, wrote a letter to Respondents and requested reinstatement as a bus operator, as follows, in Pertinent Part:

> "As you are aware, I, Floyd H. Daniels, have never resigned as a Bus Operator from the Southern California Rapid Transit District.
>
> I am hereby advising the District that I, Floyd H. Daniels, accept the offer of reinstatement with full seniority unimpaired from the date of my hiring; and, I be treated and extended the same privileges as other employees of the Southern California Rapid Transit District.
>
> I, Floyd H. Daniels, is hereby advising the District to make the offer of reinstatement effective Sunday, August 14, 1977."

A copy of the above said and stated

letter was filed with the Complaint on November 2, 1977, attached thereto, as Exhibit "K", (CT 55); and is filed in the Appendix, as Exhibit "E", Page # 55 .

On August 16, 1977, Respondents, in a letter to Petitioner, denied Petitioner's request for reinstatement as a Bus Operator, effective, Sunday, August 14, 1977; thereby, committing a separate and distinct unlawful Act of racial discrimination in employment practice. A copy of this stated letter was filed with the Complaint on November 2, 1977, attached thereto, as Exhibit "M", (CT 63); and is filed in the Appendix, as Exhibit "G", Page # 63 .

Therefore, as a result of the above stated Separate and Distinct Unlawful Act of Racial Discrimination in employment Practice committed by Respondents on August 16, 1977, when Respondents denied Petitioner (Black) His request for reinstatement as a Bus Operator Employee; while White Bus Operator Employees (caucasian) of Respondents continued to perform dual employment; Petitioner timely filed a Complaint For Discriminatory Breach Of Reinstatement For Damages And Payment For Lost Time in the Central District Federal Court on November 2, 1977, pursuant to Title 42, U.S.C., Section 1981; and Title 42, U.S.C, Section 1983. (CT 1).

The above stated Complaint was dismissed by a Judgment of the District Court on the 7th Day of February, 1978. (CT 100), and is filed in the Appendix on Page # 47 .

Within the ten (10) day requirement, on February 14, 1978, Petitioner filed a Motion For Reconsideration, pursuant to Rule 59(e), Federal Rules of Civil Procedure; and Demand For Jury Trial, pursuant to Rule 38(b), Federal Rules of Civil Procedure; and Rule 13, United States District Court, Central District of California. (CT 106) and (CT 156).

Petitioner's Motion For Reconsideration was denied by a Final Order of the District Court, filed on the 10th Day of April, 1978. (CT 163), and filed in the Appendix on Page # 45.

The United States Court of Appeals, for the Ninth Circuit, in a Memorandum, filed on March 12, 1980, affirmed the Final Order of the District Court, filed on April 10, 1978. This Court of Appeals' Memorandum is filed in the Appendix on Page # 41.

Petitioner, timely, filed a Petition For Rehearing, dated March 21, 1980, in the United States Court of Appeals for the Ninth Circuit.

In a Final Order by the Court of Appeals, filed on April 21, 1980, Petitioner's Petition For Rehearing was denied. This Final Order by the Court of Appeals is filed herein the Appendix on Page #40.

Whereas, Petitioner Petition For A Writ Of Certiorari to the United States Court of Appeals for the Ninth Circuit, for a Review; and an Opinion by this

United States Supreme Court, reversing the Final Orders of the lower Courts.

ARGUMENT

Petitioner presents the following argument in his behalf:

I. PETITIONER'S MOTION FOR RECONSIDERATION, FILED IN THE DISTRICT COURT ON FEBRUARY 14, 1978, MERIT THE PROTECTION OF RULE 59(e), FEDERAL RULES OF CIVIL PROCEDURE

Petitioner's Complaint was dismissed by a Judgment of the District Court on the 7th Day of February, 1978; and within the ten (10) day requirement, Petitioner, timely, filed his Motion For Reconsideration in the District Court on the 14th Day of February, 1978.

Rule 59(e), as follows:

> "Rule 59(e), Federal Rules of Civil Procedure, Motion to Alter Or Amend A Judgment. A Motion to Alter Or Amend The Judgment shall Be Served Not Later Than 10 Days After The Entry Of The Judgment."

The United States Court of Appeals, Third Circuit, in 1970, held:

> "Motion requesting district court to vacate its order of

summary judgment and enter an order for rehearing and reconsideration constituted a motion to alter or amend a judgment under Rule Rule 59(e)."

Sonnenblick-Goldman Corp. v. Nowalk, C.A. Ill. (1970) 420 F2d 858.

This United States Supreme Court ruled:

"In absence of specific designation of provision of Federal Rules of Civil Procedure under which Motion to Vacate Judgment is filed, Motion may be treated as filed pursuant to 59(e), rather than pursuant to Rule 60(b)."

Foman v. Davis, 371 U.S. 178. (1962).

A. Petitioner's Present Independent New Cause of Action With a Different Claim Is The Result Of A Separate And Distinct Act Of An Unlawful Employment Practice Upon Which Relief Can Be Granted

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As a result of Petitioner's visit to Respondents' Headquarters on June 21, 1977, at 425 South Main Street, Los Angeles, California, and presenting a letter from Respondents to Petitioner, dated January 28, 1971; which was an agreement providing for the payment of

$1,098.24; and Respondents' offer for the reinstatement of Petitioner as a Bus Operator, Respondents mailed Petitioner a check, dated June 22, 1977, in the amount of $1,098.24; which restored Petitioner's reinstatement Rights, as a Bus Operator.

As a result of Petitioner's reinstatement Rights having been restored, Petitioner, in a letter dated July 15, 1977, requested reinstatement as a Bus Operator.

When Respondents denied Petitioner's request for reinstatement in Respondents' Letter, dated August 16, 1977, Respondents committed a separate and distinct unlawful Act of Racial Discrimination in employment practice; which brought about a new Cause of Action with a different Claim, the Discriminatory Breach of Reinstatement Claim.

This separate and distinct unlawful Act of Racial Discrimination in Employment Practice on August 16, 1977, merit the protection of the "Jurinko v. Weigand" Ruling, which states, in pertinent part:

> "It is clear, however, that the plaintiffs' reapplication in June of 1966 represents the occurrence of an alleged unlawfull employment practice, and consequently this Court is not without Jurisdiction. See Cox v. United States Gypsum Co., 409 F.2d 289 (C.A. 7, 1969), 331 F. Supp. at 1186, n.3.

> We are in agreement with the District court's conclusion, for there were three separate and distinct acts, the latter of which occurred within the 90-day period. Therefore the 90-day statutory period commenced to run anew from the last allegedly unlawful employment practice."
>
> Jurinko v. Edwin L Wiegand Co., 477 F.2d 1038. (1973). 414 U.S. 970. (Cert. Granted).

Therefore, as a result of the above stated committed separate and distinct unlawful Act of Racial Discrimination in employment practice on August 16, 1977, by Respondents; Petitioner, timely, filed a Complaint For Discriminatory Breach Of Reinstatement For Damages And Payment For Lost Time in the Central District Federal Court on November 2, 1977, Pursuant to Title 42, U.S.C., Sections 1981, and 1983. (CT 1-80).

B. The Committed Separate And Distinct Unlawful Act In Employment Practice By Respondents On August 16, 1977, Violates Title 42, U.S.C., Sections 1981, And 1983

As there were White Bus Operator Employees (Caucasian) of Respondents who continued to perform dual employment, while Petitioner (Black) was not permitted to perform dual employment when

Respondents denied Petitioner's request for reinstatement as a Bus Operator on August 16, 1977; brought about and created a separate and distinct unlawful Act of Racial Discrimination in employment practice by Respondents; which violates Title 42, U.S.C., Sections 1981, and 1983.

1. Title 42, U.S.C., Section 1981

> "All persons within the Jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal enefit of all laws and proceedings for the security persons and property as enjoyed by white citizens, and shall be subject to like punishment, pain, penalties, taxes, licenses, and exactions of every kind, and to nother. R.S. 1977."

This United States Supreme Court ruled:

> "B. Title 42, U.S.C., Section 1981, being the present codification of one of the centry-old Civil Rights Acts of 1866, 14 Stat. 27, on the other hand, on its face relates primarily to racial discrimination in the making and enforcement of contracts. Although this court has not specifically so held,

it is well settled among the federal courts of appeals -- and we now join them -- that 1981 affords a federal remedy against discrimination in private employment on the basis of race. An individual who establishes a cause of action under 1981 is entitle to both equitable and legal relief, including compensatory and, under certain circumstances, punitive damages. See, e.g. Caperci v. Huntoon, 397 F.2d 799, (CA1), Cert. denied, 393 U.S. 940 (1968); Mansell v. Sanders, 372 F.2d 573 (CA5 1967). And a backpay award under 1981 is not restricted to the two years specified for backpay recover under Title VII." Johnson v. Railway Express Agency, 421 U.S. 454 (1975).

This United States Supreme Court, again, ruled in 1976:

"Title 42, U.S.C., 1981 provides in pertinent part that all persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts ... as is enjoyed by white citizens .... We have previously held where discrimination against Negroes was in question, that 1981 afford a federal remedy against discrimination in

private employment on the basis of race, and respondents do contend otherwise." I.N. McDonald and Raymond L. Laird v. Santa Fe Trail Transprotation Co., et al., 427 U.S. 273. (1976).

2. Title 42, U.S.C., Section 1983

When Respondents denied Petitioner's request for reinstatement as a Bus Operator, in Respondents' Letter, dated August 16, 1977; Respondents, as an Employer, deprived Petitioner of reinstatement under color of State Law.

Title 42, U.S.C., Section 1983:

"Every person who, under color of any statute, ordinance, regulation, custon, of usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other persons within the jurisdiction thereof to the deprivation of rights, privileges, or immunities secured by the constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proper proceeding for redress. R. S. 1979."

The United States Court of Appeals for the Ninth Circuit, held:

"Position of defendants as police officer did not render them immune from liability under Civil Rights Act against charges that Plaintiff had been refused reinstatement to his employment as a city lifegard in retaliation for his having exercised his First Amendment rights by authoring newspaper articles concerning certain activities on city beaches." Donovan v. Reinbold, 433 F.2d 738 (1970).

The United States Court of Appeals for the Ninth Circuit, also held:

"Compensatory damages awardable in a Civil Rights Act case are not limited to the out-of-pocket pecuniary loss suffered by complaint and may be awarded for emotional and mental distress caused by intentional tort." Donovan v. Reinbold, 433 F.2d 738 (1970).

The United States Court of Appeals for the Fourth Circuit, held:

"This section was designed to provide comprehensive remedy for deprivation of constitutional rights." Smith v. Hampton Training School for Nurses, 300 F.2d 577, (1966).

Based upon the above quoted Title 42, U.S.C., Section 1981, and Section

1983; and based upon the above quoted Rulings by the Courts on Section 1981, and Section 1983; Petitioner is entitled to have His Day in Court.

C. The Statute Of Limitations In Petitioner's Present New Cause Of Action With A Different Claim Merits The Protection Of "Jurinko v. Edwin L. Wiegand Co." Ruling

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The United States Court of Appeals for the Third Circuit, held:

> "In Jurinko, this court was presented with a claim that an employed, on three separate occasions, had refused to employ two persons because they were married women. The employer urged that because the employment charge against it was not filed within the prescribed time after the initial refusal, the district court lacked jurisdiction over the action. This court disagreed, observing that "there were three separate and distinct acts, the latter of which occurred with the (statutory) period. Therefore (that) period commenced to run anew from the last allegedly unlawful employment Practice. 477 F.2d at 1042." Masco v. United Airlines, 574 F.2d 1127, (1978).

This United States Supreme Court, the United States Court of Appeals for the Third Circuit, ruled:

> "Where plaintiffs, two married women, requested reinstatement by employer in July , 1965 and September 7, 1965, one plaintiff submitted written application and second plaintiff submitted similar request on January 10, 1966 and in June 1966 plaintiffs again sought employment and filed charges of discrimination with Equal Employment Opportunity Commission on July 29, 1966, there were three separate and distinct acts of discrimination and 90-day statutory period commenced to run anew from the last allegedly unlawful employment practice." Jurinko v. Edwin L. Wiegand Co., 477 F.2d 1038; and 414 U.S. 970, (1973). (Cert. Granted).

Therefore, when Respondents, as an Employer, committed their separate and distinct unlawful Act of Racial Discrimination in Employment Practice on August 16, 1977, when Respondents, in a letter, denied Petitioner's request for reinstatement; and Petitioner filed a Complaint For Discriminatory Breach Of Reinstatement For Damages And Payment For Lost Time in the Central District Federal Court on November 2, 1977; well within the Three-Year Statute of Limitations provided by the California Code of Civil Procedure, Section 338(1),

which is as follows:

> "Within three years:
>
> (1) An action upon a liability created by statute, other than a penalty or forfeiture."

The United States Court of Appeals for the Ninth Circuit, held:

> "Since federal Civil Rights Acts contain no provision limiting time within which action thereunder may be brought, applicable period of limitation is that provided by state." Smith v. Cremins, 308 F.2d 187, (1962).

The United States Court of Appeals for the Third Circuit, held:

> "There is no federal statute of limitations applicable to 1981, and the federal courts would look to the most nearly analogous state statute of limitations." Young v. International Telephone & Telegraph Co., 438 F.2d 757, (1971).

This United State Supreme Court ruled:

> "A. Since there is no specifically stated or otherwise relevant federal statute of limitations for a cause of

action under 1981, the controlling period would ordinarily be the most appropriate one provided by state law." Johnson v. Railway Express Agency, 421 U.S. 454, (1975).

The United States Court of Appeals for the Ninth Circuit, held:

> "California statute providing that actions on liability created by statute must be brought within three years was applicable to action under federal Civil Rights Act and not one-year California limitations statute." Smith v. Cremins, 308 F.2d 187, (1962).

Therefore, Petitioner's Present New Cause of Action, with a different Claim is not barred by the Statute of Limitations.

D. The Doctrine Of Res Judicata Is An Inapplicable Law To Bar Petitioner's Present New Cause Of Action With A Different Claim

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When Petitioner, timely, filed his "Complaint For Discriminatory Breach Of Reinstatement For Damages And Payment For Lost Time" in the District Court on November 2, 1977; Petitioner filed a Complaint based upon a separate and distinct unlawful Act of Racial

Discrimination in employment practice; which brought about and created a different Claim or Issue, "The Discriminatory Breach of Reinstatement Claim, or Issue"; which has never been litigated, or adjudicated by the Courts in any of Petitioner"s prior cause of actions.

Petitioner's discharge was not final and binding upon the parties because Respondent ignored Petitioner's Union's written request for an Arbitration Board Hearing in accordance with the then Written Contract, which specified, in pertinent part:

> "and the majority decision of the Board shall be final and binding."

Therefore, as a result of Petitioner's Discharge not being final and binding upon the parties; Petitioner filed a Petition For Writ of Mandate in the Los Angeles County Superior Court in November, 1971. When Petitioner filed his Petition For Writ of Mandate in the Superior Court, Petitioner could not, and did not alledge Racial Discrimination because of Petitioner's Race; because Petitioner could not, and did not produce any evidence of any employees of Respondents who were bus operators and performing dual employment; eventhough Petitioner diligently searched for this dual employment evidence. As Petitioner was demanding a Right to perform dual employment which was more then what other bus operators were performing; Petitioner's, because of his Race, could not, and did not alledge Racial Discrimination, and

ask the State Courts for more Rights then that "as enjoyed by white citizens".

Therefore, when the State Courts issued their Ruling of Summary Judgment, the above State Court did not rule on any unlawful Act of Racial Discrimination in employment practice by Respondents.

The above stated State Court Ruling Document is in the Clerk Transcript, as Exhibit "A", "B", pages 126, and 128, will also substantiate that the State Courts did not rule on any unlawful Act of Racial Discrimination in employment practice by Respondents in issuing their Rulings on Summary Judgment.

The Memorandum filed herein the Appendix on page # 41, in which the Court of Appeals filed on March 12, 1980; page #2, starting at line #29, states:

> "We have considered whether the court properly dismissed the action on the Transit District's motion of summary judgment."

Exhibit "A", of the Appendix, on page # 49, which is a Final Order of the Federal District Court, filed June 12, 1975, in Petitioner's prior Cause of Action will substantiate that Respondents withdrew their Motion For Summary Judgment, which states as follows, in partinent part:

> "and Defendants withdrawing their Motion for Summary Judgment."

The above quoted Exhibit "A", in pertinent part, filed herein the Appendix is, also, filed in the Clark's Transcript as Exhibit "F", page #141, sent to the Court of Appeals, in Petitioner's Appeal to the Court of Appeals.

Petitioner and his Attorney hoping, and believing that materal evidence of racial discrimination in dual employment practice by Respondents could be found, filed a "Compliant For Discriminatory Breach Of Contract For Damages" in the Federal District Court on February 28, 1975, but Petitioner and his Attorney could not find, or produce any evidence of Racial Discrimination in dual employment practice by Respondents before the Federal District Court entered the Final Order on June 12, 1975. The prospect of finding this Material Evidence was so bleak, Petitioner's Attorney resigned from the Case.

Petitioner's continued hard, sincere, and diligent work finally paid off, when Material Newly Discovered Evidence of Racial Discrimination in dual employment practice by Respondents when Petitioner was discharged by Respondents; was discovered on September 29, 1975, by a telephone call from a Person, unknown until this date.

Petitioner filed a Motion to Vacate, and an Amended Complaint in the Federal District Court on December 15, 1975, pursuant to Rule 60(b)(2), and Rule 15, Federal Rules of Civil Procedure, which is within one (1) year of the above

stated June 12, 1975, Final Order of the District Court.

Rule 60(b)(2), Federal Rules of Civil Procedure, in pertinent part:

> "The motion shall be made within a reasonable time, and for reasons (1), (2), and (3), not more than one year after the judgment, order, or proceeding was entered or taken."

Petitioner's above stated prior Cause of Action was time barred by the California Statute of Limination, Code 338(1), in the District Court's Final Order on January 14, 1976.

Therefore, based upon the above stated Final Order; the District Court ruled that Petitioner's prior Cause of Action was not within the jurisdiction of the Federal Court; and therefore, the Federal District Court could not, and did not adjudicate, or litigate a Claim for a separate and distinct unlawful Act of Racial Discrimination in employment practice when Respondents discharged Petitioner, as a Bus Operator.

Petitioner did not file his present Complaint in the District Court on November 2, 1977, in this present Cause of Action based upon the above stated separate and distinct unlawful Act of Racial Discrimination in employment practice when Respondents discharged Petitioner as a Bus Operator.

There is one (1) important pertinent fact that happen in Petitioner's present New Cause of Action, with a different Claim, or Issue, after Petitioner's prior Cause of Action had terminated in the Courts; that did not happen in "Scoggin v. Schrunk, 552 F.2d (9th cir. 1975), cert denied, 423 U.S. 1066 (1976); United Airlines v. Evans, 431 U.S. 555 (1977); and, Masco v. United 574 F.2d 1127 (3rd Cir. 1978)"; in which the Court of Appeals cited to bar this present New Cause of Action.

However, these above stated cited Cases do not bar this present New Cause of Action at all, because of the one (1) important pertinent fact, as follows:

1. The Independent Financial Transaction in the form of a check dated June 22, 1977, in the amount of $1,098.24; which was paid to Petitioner by Respondents, as part of an agreement for the reinstatement of Petitioner, as a Bus Operator; and, in accordance with this Written Letter of Agreement, Exhibit "B" herin the Appendix on page # 51 ; it restored Petitioner's Reinstatement Rights, while continued dual employment was being performed by White Bus Operator Employees(Caucasian) of Respondents, while Petitioner (Black) was not permitted to perform dual employment by Respondents.

The above stated Financial Transaction paid to Petitioner by Respondents triggered the creation of a separate and distinct unlawful Act of Racial Discrimi-

nation in employment practice by Respondents; because as a result of this Financial Transaction, Petitioner wrote a letter, July 15, 1977, to Respondents, and requested reinstatement as a Bus Operator.

On August 16, 1977, Respondents in a letter, dated August 16, 1977, denied Petitioner (Black) his request for reinstatement as a Bus Operator; while White Bus Operator Employees (Caucasian) of Respondents continued to perform dual employment; which created a separate and distinct unlawful Act of Racial Discrimination in employment practice by Respondents.

The two aforestated separate and distinct unlawful Acts of Racial Discrimination in employment by Respondents are not one and the very same.

Again, as aforequoted, this United States Supreme Court, and the United States Court of Appeals for the Third Circuit, ruled:

> "It is clear, however, that the plaintiffs' reapplication in June of 1966 represents the occurrence of an allege unlawful employment practice, and consequently this Court is not without Jurisdiction. See Cox v. United States Gypsum Co., 331 F. Supp. at 1186, n.3. We are in agreement with the District Court's conclusion, for there were three separate

> and distinct acts, the latter of which occured within the 90-day period. Therefore the 90-day statutory period commenced to run anew from the last allegedly unlawful employment practice." Jurinko v. Edwin L. Wiegand Co., 477 F.2d 1038 (1973); 414 U.S. 970.

Based upon the above quoted Ruling by the Courts, when Respondents, in their Letter, dated August 16, 1977, denied Petitioner's request for reinstatement as a Bus Operator; Respondents committed a separate and distinct unlawful Act of Racial Discrimination in employment practice on August 16, 1977; which brought about, and created a separate and distinct Claim, or Issue, The Discriminatory Breach of Reinstatement Claim, or Issue.

Therefore, when Petitioner, timely, filed his Complaint For Discriminatory Breach of Rienstatement For Damages And Payment For Lost Time, in the Federal District Court on Nevember 2, 1977, as a result of a separate and distinct unlawful Act of Racial Discrimination in employment practice by Respondents on August 16, 1977; which created and brought about a New Cause of Action, with a different Claim, or Issue that has never been Adjudicated, or Litigated by the Courts in Petitioner's prior Cause of Action.

The United States Court of Appeals for the Fifth Circuit, held:

"Identity of parties, of subject-matter, and issues, are the essential elements of Res Judicata, and the absence of any one thereof is fatal to a plea under such Doctrine." Iselin v. C.W. Hunter Co., 173 F.2d 388 (1949).

The United States Court of Appeals, for the Tenth Circuit, held:

"Doctrine of res judicata requires identity of issues as between cases involved." Guarantee Acceptance Corp. v. Fidelity Mortgage Investors, 544 F.2d 449 (1976).

The United States Court of Appeals for the Fifth Circuit, held:

"For res judicata to apply there must be identity of both parties and issues. Miller et al. v. Meinhard-Commercial Corp., 462 F.2d 358 (1972).

The Court of Appeals states in its Memorandum, filed March 12, 1980, on page #3, paragraph #3, starting at line #9, the followings:

"The state court judgment based on the Transit District's motion for summary judgment and the prior federal district court's judgment based on the

> Transit District's motion to dismiss on the ground that Daniels' claim was time barred were both judgments on the merits."

Very surely the above stated judgments were on the merits, but very surely the above stated judgments did not adjudicate, or litigate the Claim, or Issue in Petitioner's present New Cause of Action with a different Claim, or Issue, The Discriminatory Breach of Reinstatement Claim, or Issue, based upon a separate and distinct unlawful Act of Racial Discrimination in Employment Practice when Respondents on August 16, 1977, denied Petitioner's request for reinstatement as a Bus Operator.

The above statement appear to be very much supported by two (2) Rulings by this United States Supreme Court, in regard to a New Cause of Action, with a different Claim.

This United States Supreme Court Ruled:

> "In a subsequent action between the same parties on a different claim, a judgment is conclusive only as to the point or question actually litigated and determined in the original action, not as to what might have been litigated and determined." United States v. International Building Co., 345 U.S. 502 (1953).

Again, this United States Surpreme Court Ruled:

> "Where the second cause of action between the parties is upon a different claim the prior judgment is res judicata not as to the issues which might have been tendered but only as to those upon the determination of which the finding or verdict was rendered." Mercoid Corp. v. Mid-Continent Co., 320 U.S. 661 (1944).

Therefore, the Doctrine of Res Judicata is an Inapplicable Law to bar Petitioner's Present New Cause of Action With a Different Claim; as the Doctrine does not bar this present new Cause of Action with a different Claim.

II. WHY THIS UNITED STATES SUPREME COURT SHOULD REVIEW PETITIONER'S PRESENT NEW CAUSE OF ACTION UPON A DIFFERENT CLAIM; AND REVERSE THE DECISIONS OF THE LOWER COURTS

A. Article 3, Section 2, Clause 1, Of The United States Constitution Provides This Supreme Court With Judicial Power And Authority To Review And Issue Opinions In Causes Of Actions Unlawfully Violating Title 42, U.S.C., Sections 1981 And 1983; And The 14th Amendment

Title 42, U.S.C., Section 1981, and 1983, aforequoted in this "Petition For A Writ Of Certiorari", are two (2) Federal Statutes that have been passed and adopted by the Congress of the of America.

Article 3, Section 2, Clause 1, of the United States Constitution provides this United States Supreme Court with judicial power and authority to Review Causes of Actions, and Issue Opinions on the unlawful violations of Title 42, U.S.C., Sections 1981, and 1983 Statutes, and the 14th Amendment of the United States Constitution, by ensuring all Citizens of the United States of America the protection of their Endowed Equal Rights; which also, includes Floyd H. Daniels, A Natural Born United States Citizen, and the Petitioner in this present new Cause of Action upon a different Claim, which is the result of an independent Financial Transaction on June 22, 1977, from Respondents to Petitioner, that triggered the creation of a separate and distinct unlawful Act of Racial Discrimination in Employment Practice committed by Respondents on August 16, 1977, when Respondents denied Petitioner's Written Request for reinstatement as a Bus Operator; which resulted into a Complaint that was timely filed by Petitioner in the Federal District Court on November 2, 1977; was timely filed to the Court of Appeals; and now, has timely been Petitioned to this United States Supreme Court for a Review, and An Opinion issued by this United States Supreme Court.

Article 3, Section 2, Clause 1, o the United States Constitution states, as follows:

> "The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public minister and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two citizens of different states; between citizen of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens, or subjects."

B. The District Court, And The Court Of Appeals Have Denied Petitioner The "Due Process Of Law" And "Equal Protection Of The Laws"

The District Court improperly denied Petitioner's "Motion For Reconsideration" in a Final Order; and the United States Court of Appeals for the Ninth Circuit have ignored and knowingly

failed to address it itself to the "Financial Transaction Fact", in the form of a check in the amount of $1,098.24, dated June 22, 1977, paid to Petitioner by Respondents, as part of an agreement, which restored Petitioner's Reinstatement Rights as a Bus Operator; in the Court of Appeals' Memorandum, filed on March 12, 1980, Affirming the District Court's Final Order.

The above stated "Financial Transaction Fact" is filed herein the Appendix, Exhibit "C" on page #52.

Also, the above stated "Financial Transaction Fact" was filed hereto, with Petitioner's Complaint, and referred to in Petitioner's Opening Brief, as "(CT 52)."

Petitioner, also, filed the "Financial Transaction Fact" attached herewith, as an Exhibit "A", in Petitioner's "Petition For Rehearing"; and stated the followings, in pertinent part:

> "This Financial Transaction Fact has been over looked by this Court; and this Court has failed to address itself to this Financial Transaction Fact in this Court's Memorandum, filed on March 12, 1980; which impose an injustice by this Court, to Appellant, as a Citizen of these United States of America."

Therefore, the Court of Appeals have ignored, and have knowingly failed

to address itself to this "Financial Transaction Fact" by filing a Final Order on April 21, 1980, "The petition for rehearing is denied"; which has imposed an injustice by the Court of Appeals in Petitioner's Present New Cause of Action upon a different Claim; and, Petitioner, as a Natural Born Citizen of these United States of America.

As a result of the above stated injustice that was imposed by the Court of Appeals to Petitioner's Present New Cause of Action upon a different Claim; and Petitioner, as a Natural Born Citizen of these United States of America; the Court of Appeals unjustly ruled the the followings:

1. There was no separate and distinct unlawful Act of Racial Discrimination in employment practice committed by Respondents on August 16, 1977.

2. Petitioner's Present New Cause of Action upon a different Claim is barred by the Doctrine of Res Judicata.

3. Petitioner's Present New Cause of Action upon a different Claim is barred by the Statute of Limitations.

Therefore, based upon the above stated unjust ruling by the United States Court of Appeals for the Ninth Circuit, the Court of Appeals has denied Petitioner, A Natural Born Citizen of the United States of America, the "Due Process of Law"; and "Equal Protection of the Laws", as precribed by the 14th Amendment

of the United States Constitution, which states as follows:

> "All persons born or naturalized in the United States, subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside."
>
> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

CONCLUSION

Petitioner has stated a Claim upon which Relief can be granted in this present new Cause of Action upon a different Claim.

The above statement is supported by three (3) important pertinent facts, as follows:

1. There was a separate and distinct unlawful Act of Racial Discrimination in Employment Practice committed by Respondents on August 16, 1977.

2. Petitioner's Present New Cause of Action upon a different Claim, is not barred by the Doctrine of Res Judicata.

3. Petitioner's Present New Cause of Action upon a different Claim, is not barred by the Statute of Limitations.

Therefore, there has been a "Manifest Abuse of Discretion", committed by the lower Courts; and, Petitioner's Motion For Reconsideration, pursuant to 59(e), Federal Rules of Civil Procedure; and, Petitioner's Demand For Jury Trial, pursuant to Rule 38(b), Federal Rules of Civil Procedure; both filed in the Federal District Court on February 14, 1978, should be granted by this United States Supreme Court.

WHEREFORE, Petitioner respectfully petition the United States Supreme Court to Review Petitioner's Present New Cause of Action Upon A Different Claim; and Reverse the Final Orders of the lower Courts, by issuing an Opinion that Petitioner's Motion For Reconsideration; and Demand For A Jury Trial, be so granted; and Remand this present new Cause of Action upon a different Claim, to the District Court for futher proceedings consistent with this United States Supreme Court's Opinion.

DATED: June 6, 1980.

Respectfully submitted,

FLOYD H. DANIELS

In Propria Persona

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. _____

FLOYD H. DANIELS,

Appellant and Petitioner,

vs.

SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT, a public coporation; and JACK R. GILSTRAP, as General Manager of the SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT,

Appellees and Respondents.

APPENDIX

A. JUDGMENTS AND FINAL ORDERS

1. Court of Appeals' Final Order, filed, April 21, 1980, page #40 .
2. Court of Appeals' Memorandum, filed, March 12, 1980, page #41 .
3. Federal District Court's Final Order,

filed April 10, 1978, page #45.

4. Federal District Court's Judgment, entered February 7, 1978, page #47.

B. EXHIBITS

5. Exhibit "A", Federal District Court's Amended Judgment (Final Order), filed June 12, 1975, page #49.

6. Exhibit "B", A Letter of an agreement for Reinstatement. Page #51.

7. Exhibit "C", A Photostat Copy of a Check, dated June 22, 1977, from Respondents to Petitioner. Page #52.

8. Exhibit "D", A Letter, June 25, 1977, from Petitioner to Respondents. Page #53.

9. Exhibit "E", A Letter, dated July 15, 1977, from Petitioner to Respondents, Requesting Reinstatement. Page#55.

10. Exhibit "F", A Letter, dated August 15, 1977, from Petitioner to Respondents. Page #61.

11. Exhibit "G", A Letter, dated August 16, 1977, from Respondents to Petitioner, in which Respondents denied Petitioner's Request for Reinstatement. Page #63.

FILED

APR 21 1980

RICHARD H. DEANE
CLERK, U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FLOYD H. DANIELS, Plaintiff-Appellant,	)	
vs.	)	No. 78-2007
SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT, a public corporation; and JACK R. GILSTRAP, as General Manager of the Southern California Rapid Transit District, Defendants-Appellees,	)	O R D E R

Before: TRASK and FLETCHER, Circuit Judges, and SOLOMON,* District Judge

The panel as constituted in the above case has voted to deny the petition for rehearing.

The petition for rehearing is denied.

*Honorable Gus J. Solomon, Senior United States District Judge for the District of Oregon, sitting by designation.

FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MAR 12 1980

RICHARD H. DEANE
CLERK, U.S. COURT OF APPEALS

FLOYD H. DANIELS,

Plaintiff-Appellant,

vs.

SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT, a public corporation; and JACK R. GILSTRAP, as General Manager of the Southern California Rapid Transit District,

Defendants-Appellees.

No. 78-2007

MEMORANDUM

Appeal from the United States District Court for the Central District of California

Before: TRASK and FLETCHER, Circuit Judges, and SOLOMON,* District Judge

Floyd H. Daniels, a black man, was a bus driver for the Southern California Rapid Transit District (Transit District). In April 1970, he was discharged after a hearing for violating company rules on unauthorized dual employment and for falsifying sick reports. These matters came to light as a result of an investigation by the Transit District when he was arrested for the attempted rape of a passenger on his bus, a charge on which he was acquitted.

In November 1977, Daniels filed the pro se action against the Transit District and its general manager (appellees) which is now before the court. In it he contends, as he had in two prior actions, that because of his race he was terminated. He again sought reinstatement and damages for having been

* Honorable Gus J. Solomon, Senior United States District Judge for the District of Oregon, sitting by designation.

wrongfully discharged in 1970.

The appellees filed a motion to dismiss on the ground that under the doctrine of res judicata the adverse judgments in the two prior actions barred Daniels from maintaining this action and on the further ground that this action was barred by the statute of limitations.

The district court granted the motion and ordered the complaint dismissed on the ground that the judgment against Daniels in the prior district court action barred the present action on the doctrine of res judicata. Shortly thereafter, Daniels filed a motion to reconsider [Civ. R. 59(e)] the ruling and judgment. On April 10, 1978, the district court denied the motion for reconsideration and again "ordered, adjudged and decreed that plaintiff take nothing by his complaint."

Daniels appealed from that order.

The standard of review on a Rule 59(e) motion is whether there was a manifest abuse of discretion. Walker v. Bank of America, 268 F.2d 16, 25 (9th Cir.), cert. denied, 361 U.S. 903 (1959).

Pleadings in civil rights actions must be liberally construed, Thomas v. Younglove, 545 F.2d 1171 (9th Cir. 1976), particularly when brought pro se. Haines v. Kerner, 404 U.S. 519 (1972).

Even with this standard, our review of the record shows no abuse of discretion in the denial of the motion to reconsider. Moreover, we reject appellees' contention that we are limited to that issue. We have considered whether the court properly dismissed the action on the Transit District's motion for summary judgment.

Daniels contends that the present action encompasses matters outside the scope of the prior state and federal actions and that his claim is therefore not identical with that set forth in the prior actions.

Daniels sought the same kind of relief in each action he filed. All of them arose out of the same set of facts culminating in the termination of his employment by the Transit District in 1970.

The state court judgment based on the Transit District's motion for summary judgment and the prior federal district court's judgment based on the Transit District's motion to dismiss on the ground that Daniels' claim was time barred were both judgments on the merits.

Where a claim is based on the same asserted wrong that was the subject of a prior action, and where the parties are the same, res judicata will bar the subsequent action because a prior judgment on the merits will not only bar every claim that was raised in the prior action but will also preclude every other legal theory or ground for recovery that might have been asserted. See Scoggin v. Schrunk, 552 F.2d 436 (9th Cir. 1975), cert. denied, 423 U.S. 1066 (1976).

There is no merit in Daniels' attempt to overcome the running of the statute of limitations by asserting that the Transit District's refusal to meet his 1977 demand for unconditional reinstatement constitutes grounds for a new claim. A request for reinstatement does not revive an earlier claim based on a discriminatory termination, particularly when the earlier termination was held to be lawful. United Airlines v. Evans, 431 U.S. 555 (1977);

Masco v. United Airlines, 574 F.2d 1127 (3rd Cir. 1978).

AFFIRMED.

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TELEPHONE (213) 629-3328

STEVEN D. WEINSTEIN
Attorneys for Defendants
SOUTHERN CALIFORNIA RAPID
TRANSIT DISTRICT and JACK R.
GILSTRAP

FILED
APR 10 1978
CLERK, U. S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FLOYD H. DANIELS, Plaintiff, vs. SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT, a public corporation; and JACK R. GILSTRAP, as General Manager of the SOUTHERN CALIFORNIA RAPID TRANSIT DISTICT, Defendants.	Civil No. 77 4103-AAH ORDER

The Motion of the Plaintiff, FLOYD H. DANIELS, to Alter or Amend Judgment, designated by the Plaintiff as a Motion for Reconsideration, duly and regularly came on for hearing before the HONORABLE A. ANDREW HAUK, District Judge, on the 27th day of March, 1978, the Plaintiff appearing in propria persona, and the Defendants appearing by their counsel, MUSICK, PEELER & GARRETT by STEVEN D. WEINSTEIN, and the Court having considered the Plaintiff's Motion for Reconsideration of the Judgment entered on February 7, 1973, and the case having been fully argued, and the

matter having been submitted, and the Court having found that the Motion for Reconsideration raises no new matters and is without merit, and the Court having found that Defendants' Motion to Dismiss the Complaint for Failure to State a Claim Upon Which Relief Can Be Granted was properly granted, and the Court having advised and cautioned the Plaintiff regarding provisions imposing sanctions for vexatious litigation, including Local Rule 3(i) of the United States District Court of the Central District of California:

IT IS ORDERED, ADJUDGED AND DECREED, that Plaintiff's Motion for Reconsideration be denied;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff take nothing by his Complaint on file herein.

DATED: Los Angeles, California, this 10th day of April, 1978.

JUDGE, UNITED STATES DISTRICT COURT

MUSICK, PEELER & GARRETT

MUSICK, PEELER & GARRETT
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Attorneys for Defendants
SOUTHERN CALIFORNIA RAPID
TRANSIT DISTRICT and JACK R.
GILSTRAP

FILED
FEB 6 1978
CLERK, U. S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

ENTERED
FEB 7 1978
CLERK, U. S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FLOYD H. DANIELS Plaintiff vs. SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT, a public corporation; and JACK R. GILSTRAP, as General Manager of the SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT, Defendants.	Civil No. 77 4103-AAH JUDGMENT

The Motion of the Defendants, SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT and JACK R. GILSTRAP, duly and regularly came on for hearing before the HONORABLE A. ANDREW HAUK, District Judge, on the 23rd day of January, 1978, the Plaintiff appearing in propria persona, and the Defendants appearing by their counsel, MUSICK, PEELER & GARRETT by STEVEN D. WEINSTEIN, and the Court having considered the Defendants' Motion to Dismiss the Complaint for Failure to State a Claim Upon Which Relief Can Be Granted and other matters submitted to the Court in connection with said

Docketed
Mld copy Plys
Mld Notice Plys
JS-6

Motion, and the case having been fully argued, and the matter having been submitted, and the Court having found that the Complaint fails to state a claim upon which relief can be granted in that Plaintiff's claims are barred by the doctrine of res judicata by the prior court action of Floyd H. Daniels v. Southern California Rapid Transit District, et al., No. CV 75 290 EAC, and the Court having found it unnecessary to make a determination based on the other grounds presented by the Defendants' Motion:

IT IS ORDERED, ADJUDGED AND DECREED, that Defendants' Motion be granted;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that Plaintiff take nothing by his Complaint on file herein.

DATED: Los Angeles, California, this 6th day of January, 1978.

JUDGE, UNITED STATES DISTRICT COURT

101

MUDICK, PEELEN & GARRETT

MUSICK, PEELER & GARRETT
ATTORNEYS AT LAW
LOS ANGELES, CALIFORNIA 90017

MICHAEL H. CONLON
Attorneys for Defendants

LODGED
JUN 10 1975
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY _____ DEPUTY

FILED
JUN 12 1975
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY _____ DEPUTY

ENTERED
JUN 12 1975
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY _____ DEPUTY

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FLOYD H. DANIELS,

Plaintiff,

vs.

SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT, a public Corporation, et al.,

Defendants.

NO. CV 75 290 EAC

AMENDED JUDGMENT

The Motion of the Plaintiff, FLOYD H. DANIELS, to vacate Judgment and the Motion for Summary Judgment of Defendants SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT and JACK R. GILSTRAP, duly and regularly came on for hearing before the Honorable E. Avery Crary, District Judge, on the 9th day of June, 1975, the Plaintiff appearing by his counsel, McSherry and Dickey, and the Defendants appearing by their counsel, Musick, Peeler and Garrett, and the Court having considered the Plaintiff's Motion to Vacate Judgment, and the case having been fully argued, and the matter having been submitted, and Defendants withdrawing their Motion for Summary Judgment and the Court having found that that portion of Plaintiff's Complaint brought pursuant to 42 U.S.C. Section 1981 is an action brought under Statute which Section requires an action brought pursuant thereto to allege a racial discrimination and that Plaintiff does not allege racial discrimination, and the

Docketed
JUN 12 1975

49. Exhibit "A"

Court having found that the Plaintiff's actions brought pursuant to 42 U.S.C. Section 1981 and 42 U.S.C. Section 1983 failed to state a claim upon which relief can be granted in that Plaintiff's claims are barred by C.C.P. 338(1):

IT IS ORDERED, ADJUDGED AND DECREED, that Plaintiff's Motion to Vacate Judgment be denied;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that Plaintiff take nothing by his Complaint on file herein.

DATED: Los Angeles, California, this 11th day of June, 1975.

E. Hay Gray

JUDGE, UNITED STATES DISTRICT COURT

142

Part of

Exhibit "A"

SOUTHERN CALIFORNIA
RAPID TRANSIT DISTRICT

1060 SOUTH BROADWAY • LOS ANGELES, CALIFORNIA 90015 • TELEPHONE (213) 749 6977

JACK R. GILSTRAP
GENERAL MANAGER

January 28, 1971

REGISTERED MAIL
RETURN RECEIPT REQUESTED

Mr. Floyd H. Daniels
4650 Coliseum Street - Apt. #1
Los Angeles, California 90016

Dear Mr. Daniels:

This letter will inform you that agreement has now been reached between Southern California Rapid Transit District and United Transportation Union, pursuant to the terms of which the District is to (1) compensate you for the period June 20 through July 18, 1970, plus accrued vacation time, and (2) offer to you reinstatement upon the conditions that such offer be accepted within five days after receipt of this letter and that you sever your employment by the Los Angeles City School System.

We accordingly enclose a check payable to your order in the amount of $1,098.24, representing the above mentioned compensation after appropriate deductions. In addition, we hereby offer you reinstatement upon the conditions above specified, which are that you accept the offer and sever your School System employment within the permitted five-day period. Your failure to comply with these conditions during such five-day period will, of course, automatically result in the permanent loss of any reinstatement rights on your part.

Very truly yours,

SOUTHERN CALIFORNIA
RAPID TRANSIT DISTRICT

By _____
Manager of Operations

Enclosure
cc: Mr. Earl R. Clark
General Chairman
United Transportation Union

51. Exhibit "B"

215228

Southern California
RAPID TRANSIT DISTRICT
LOS ANGELES, CALIFORNIA
OPERATION FUND

16-104
1220

PAY TO THE ORDER OF

F.H. DANIELS
4650 COLISEUM ST., APT. 1
LOS ANGELES, CA. 90016

NUMBER	MO.	DAY	YEAR	
065228	06	22	77	$ **1098.24

Bank of America — SEVENTH AND SPRING OFFICE 640 SOUTH SPRING STREET LOS ANGELES, CALIFORNIA 90054

ASSISTANT TREASURER

GENERAL MANAGER

⑈215228⑈ ⑆1220⑆0104⑆000196⑈80156⑈

FORM 22-59

SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT
425 SOUTH MAIN, LOS ANGELES, CALIFORNIA 90013

REMITTANCE ADVICE

WARRANT NO. 83877

F.H. DANIELS
4650 COLISEUM ST., APT. 1
LOS ANGELES, CA. 90016

CHECK NUMBER 065228 DATE 062277 **1098.24

INVOICE					DISTRIBUTION				
DEPT	DATE	YOUR NO	AMOUNT	CR	ACCT NO	UNIT	ACCOUNT	AMOUNT	CR
TO REPLACE ACCOUNT STALE DATE, PAYROLL ACCOUNT SPECIAL CHECK NO. 0309681 ISSUED PAYABLE TO YOUR ORDER ON 1-28-1971			1098 24				1990	1098 24	

52. Exhibit "C"

Floyd H. Daniels
4650 Coliseum Street, #1
Los Angeles, California 90016
June 25, 1977

Telephone (213) 296-4588

Mr. John S. Wilkens, Manager of Employee Relations
Southern California Rapid Transit District
425 South Main
Los Angeles, California 90013

Dear Sir:

As a result of my visit to the Southern California Rapid Transit District Headquarters at 425 South Main on June 21, 1977; I, Floyd H. Daniels, received on June 24, 1977, a check from the District in the amount of $1,098.24, as part of an agreement between the Southern California Rapid Transit District and United Transportation Union in a letter to me on January 28, 1971. The letter is inclosed.

I want to thank you for the kind and friendly service I recieved on my visit to the District Headquarters. It was great.

As you know, another check for the same amount above was sent to me with the inclosed letter on January 28, 1971; and, on the advice of my Attorney, this check was returned to your Headquarters in a letter by my Attorney at the time on February 27, 1971.

In paragraph number one of the inclosed letter from the District dated January 28, 1971, there were two (2) agreements; and the District only complied with the number (1) agreement when the District sent me the check dated June 22, 1977.

The two (2) agreements are:

> "(1) Compensate you for the period June 20 through July 18, 1970, plus accrued vacation time."

For the above, this is the check in the amount of $1,098.24, the District sent to me dated June 22, 1977.

> "(2) Offer to you reinstatement upon the conditions that such offer be accepted within five days after receipt of this letter and that you sever your employment by the Los Angeles City School System."

Since the District has complied with agreement number (1), I am now asking the District to kindly consider the number (2) part of the agreement with modifications. The modifications are that the District consider striking the followings from

53. Exhibit "D"

agreement (2), which is, "and that you sever your employment by the Los Angeles City School System."

I am kindly asking the District to modify agreement (2), because You, Mr. Wilkens, and I, Floyd H. Daniels, both know that it has substantiated that there were Bus Operators (Caucasian), employed by the Southern California Rapid Transit District who were performing dual employment long before I, Floyd H. Daniels, started performing dual employment. Those Bus Operators Employees (Caucasian), were performing dual employment at the time the inclosed letter was written; and, those Bus Operator Employees (Caucasian) have continued to perform dual employment until the present time.

So to require Me, Floyd H. Daniels, at this time to sever my employment with the Los Angeles City School System would be Racial Discrimination.

I went into one of the District's Division Headquarters, and a sign read, "EQUAL EMPLOYMENT OPPORTUNITY IS THE LAW." "DISCRIMINATION IS PROHIBITED by the Civil Rights Act of 1964, and by Executive Order Number 11246."

As I entered your very fine personnel Office on June 21, 1977, I looked to my left on the wall, and there was sign which read, "AN EQUAL OPPORTUNITY EMPLOYER."

As I left one of the personnel offices, I, again, read the sign and I asked myself, "if the District really intended for this to apply for all Citizens, including Me, Floyd H. Daniels?"

Therefore, I am writing this letter to inform the District that I have received the check in the amount of $1,098.24; and, I have accepted the check. Also, I am available and ready for reinstatement as a Bus Operator with all rights, privileges, and seniority. It is my desire not to be just a Bus Operator, but one of the top Bus Operators of the Southern California Rapid Transit District.

I told Ms. Showers in Personnel that you were a fine gentleman, and that I highly respected you for your integrity and honor. This is why I addressed this letter to you. If you are not the appropriate Officer to consider this matter, kindly refer this letter to the appropriate Officer, or Officers for consideration.

It is requested that the above matter be considered with the best of integrity and dignity.

May God bless you and all of your fellow officers of the Southern California Rapid Transit District.

Very truly yours,

Floyd H. Daniels

Self:
cc: File
Inclosures:
1. Letter to Floyd H. Daniels, dated January 28, 1971.
2. Employee's Earning Statement — Special, dated January 28, 1971
3. Copy of check dated June 22, 1977 for the amount of $1,098.24, and Remittance Advice, dated June 22, 1977.

Page #2 of Exhibit "D"

Floyd H. Daniels
4650 Coliseum Street, #1
Los Angeles, California 90016
July 15, 1977

Telephone (213) 296-4588

Mr. John S. Wilkens, Manager of Employee Relations
Southern California Rapid Transit District
425 South Main Street
Los Angeles, California 90013

Dear Mr. Wilkens:

In receipt of your letter dated July 12, 1977 regarding my offer to accept reinstatement as a bus operator for the Southern California Rapid Transit District, I hereby give my reply.

First of all, the letter dated January 28, 1971, signed by George F. Goehler, the Manager of Operations at that time, was an agreement between the Southern California Rapid Transit District and the United Transportation Union. I have attached hereto, two letters, one (1) from the District, and one (1) from the Union that led up to this agreement between the Union and the District in the letter to me, dated January 28, 1971.

The two (2) agreements in the letter dated January 28, 1971 were all in one (1) sentence, as follows:

> "This letter will inform you that agreement has now been reached between Southern California Rapid Transit District and United Transportation Union, pursuant to the terms of which the District is to (1) compensate you for the period June 20 through July 18, 1970, plus accured vacation time, and (2) offer to you reinstatement upon the conditions that such offer be accepted within five days after receipt of this letter and that you sever your employment by the Los Angeles City School System."

I did not accept the check for $1,098.24. I sent it back to the District, and at the same time, I did not accept reinstatement. Instead, my Attorney at that time, and I went to Court.

When I came into your personnel office on June 21, 1977, the accured vacation time in the amount of $590.63 was due me. This is substantiated by the "Tender of Wages Due", attached hereto. However, the District elected to pay me also, for the period June 20 through July 18, 1970, which was the agreement between the Union and District, which amounted to $880.79. $880.79 + 590.63 = $1,471.42. After $373.18 in deductions, the net amount was $1,098.24.

The above is the amount of the check that I did not accept, and instead, returned it back to the District in a letter dated February 27, 1971.

Page #1 of
Exhibit "E"

The Auditor for the District came into the personnel office on June 21, 1977, and showed me the old check, and said, "I had to contact Mr. Wilkens, who was in a meeting and get his approval to replace this check with another check, and we will get it out tomorrow." The check was made up and updated to June 22, 1977. I received the check on June 24, 1977, and on June 25, 1977, I made an offer to accept reinstatement as a bus operator in a letter to you. You, Mr. Wilkens, considered it fair and in order to adjust the date of the check that I did not accept and returned to the District on February 27, 1971. You ordered prepared and issued to me another check dated June 22, 1977.

If the District reconsidered and re-adjusted the date of the check that I did not accept, but returned it to the District, which was agreement (1) between the Union and District in the letter dated January 28, 1971; it is only fair and just that the District consider it is fair and in order to reconsider and adjust agreement (2) between the District and Union in the same letter, same paragraph, and same sentence.

I stated to you in my letter dated June 25, 1977, that it had been substantiated that there were Bus Operators (Caucasian) employed by the Southern California Rapid Transit District who were performing dual employment long before I, Floyd H. Daniels, started performing dual employment. These Bus Operators Employees (Caucasian) were performing dual employment at the time the letter dated January 28, 1971 was written. It was demanded that I, Floyd H. Daniels, sever my outside employment, while the Bus Operators Employees (Caucasian) who were performing outside employment were not demanded that they sever their outside employment. This is Racial Discrimination. These Bus Operators Employees (Caucasian) have continued to perform dual employment up until the present time. If I, Floyd H. Daniels, is not reinstated as a bus operator, this is also, Racial Discrimination.

In my letter dated June 25, 1977, I stated that the U.S. Civil Rights Act of 1964, not the California Laws, being violated by the District. This is U.S. Title VII. I now call your attention to Title 42, Section 1981 of the United States Code being violated by the District.

You mentioned the Courts in your letter, dated July 12, 1977. This is an independent style of action. This action started when the District prepared and sent me the the check in the amount of $1,098.24. Therefore, the Courts have not decided on this action.

As you are aware, I, Floyd H. Daniels, have never resigned as a Bus Operator from the Southern California Rapid Transit District.

I am hereby advising the District that I, Floyd H. Daniels, accept the offer of reinstatement with full seniority unimpaired from the date of my hireing; and, I be treated and extended the same privileges as other employees of the Southern California Rapid Transit District.

I, Floyd H. Daniels, is hereby advising the District to make the offer of reinstatement effective Sunday, August 14, 1977.

I, Floyd H. Daniels, will come to work on time and perform my duties as a

bus operator just as other employees are required.

I will come to work every day I am suppose to come to work.

This outside employment will not affect my performance as a bus operator. This is reflected by my previously dual employment. I had 65 demerits when I started performing dual employment; and, I had reduced the demerits down to 15 demerits before I was taken out of service. Also, I had no chargeable accidents; and, only one miss-out, which was due to to a misunderstanding of the schedule for Veterans Day.

Mr. Wilkens, since the above two (2) agreements were between the District and Union, I am sending Mr. Earl R. Clark, General Chairman, United Transportation Union, a copy of this letter, a copy of my letter to you dated June 25, 1977, and a copy of your letter to me, dated July 12, 1977.

I am hereby, kindly requesting Mr. Earl R. Clark, General Chairman, United Transportation Union, to execute in the writing of a letter to you stating the United Transportation Union's position regarding my offer to accept reinstatement effective Sunday, August 14, 1977; and, a copy of that letter be sent to me for my record.

Mr. Wilkens, I am hereby, kindly requesting a written answer from you of the Southern California Rapid Transit District's position regarding my offer to accept reinstatement as a bus operator effective Sunday, August 14, 1977.

Yours very truly,

Floyd H. Daniels

Self:
cc: Mr. Earl R. Clark, General Chairman, United Transportation Union.
Mr. Jack R. Gilstrap, General Manager, Southern California Rapid Transit District.
Mr. William C. Haag, Local Chairman 1565, United Transportation Union.

Inclosures:
1. A copy of the letter from Mr. Clark to the District, dated January 4, 1971.
2. A copy of the letter from Mr. Goehler to the Union, dated January 22, 1971.
3. "Tender of Wages Due", dated July 1, 1970.

JAN 5 1971

J. S. W.

united transportation union

GENERAL COMMITTEE OF ADJUSTMENT
SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT

Suite 407 • 1725 West Sixth Street • Los Angeles, California 90017 • [redacted] 484-8191

Kenneth R. Moore
General Chairman
Earl R. Clark
Vice Chairman
William C. Haag
Secretary

January 4, 1971

Mr. George S. Goehler
Manager of Operations
So. Calif. Rapid Transit District
1060 South Broadway
Los Angeles, California 90015

Dear Mr. Goehler:

Re: Operator Floyd H. Daniels, Badge #2921

Thank you for your letter of December 18, 1970, in which you offered to compensate Operator Daniels for the period June 20 to July 18, 1970. The General Committee of Adjustment considered your proposal and has accepted it subject to the following proviso: That Operator Daniels be offered reinstatement to his former position with the District, and be given five days in which to accept said offer of reinstatement.

It is understood, of course, that this offer of reinstatement would be based upon the conditions set forth in your letter of June 11, 1970, which was accepted by Mr. K. R. Moore's letter of June 15, 1970, where it says in part:

> "In the event Operator Daniels is exonerated of the pending charge of attempted rape, he must then make an election as to whether he desires to work for the District as a bus driver or for the Los Angeles School District as a teacher. It is agreed that he cannot do both."

Would you kindly advise us at your earliest convenience whether this condition to the proposed settlement is satisfactory.

Yours very truly,

Earl R. Clark
General Chairman

cc: Mr. W. C. Haag, Local Chairman

cc: [illegible]

RECEIVED
JAN 5 1971

Page #4 of
Exhibit "E"

SOUTHERN CALIFORNIA
RAPID TRANSIT DISTRICT
1060 SOUTH BROADWAY • LOS ANGELES, CALIFORNIA 90015 • TELEPHONE (213) 749-6977

JACK R. GILSTRAP
GENERAL MANAGER

January 22, 1971

Mr. Earl R. Clark, General Chairman
United Transportation Union
1725 West Sixth Street - Suite 407
Los Angeles, California 90017

Dear Mr. Clark:

Thank you for your letter of January 4, 1971, in response to our letter of December 18, 1970, with respect to the Floyd H. Daniels case.

This will confirm that we are now in agreement that Operator Daniels will be (1) compensated for the period June 20 through July 18, 1970, and (2) offered reinstatement by the District upon the conditions that he accept such offer within five days after its receipt and sever any employment by the Los Angeles City School System.

We will accordingly proceed promptly with such payment and re-employment offer, furnishing you of course, with appropriate copies including a copy of any response from Operator Daniels.

Very truly yours,

George F. Gechler
Manager of Operations

DPE/MLR:eh

cc: M. L. Rise
J. S. Wilkens
J. T. Johnston

MTA 89:19
REV. 7/8/81

LOS ANGELES METROPOLITAN TRANSIT AUTHORITY

TENDER OF WAGES DUE

Date July 1, 19 70.

DEPARTMENT	LOCATION
Transportation	3207

To Employee Floyd H. Daniels Index No. 2921

$590.63 Gross in cash is hereby tendered to you in full payment of balance of wages due upon your discharge this instant. Vacation Time of 68-69 -- 69-70, 157 Hrs. 30 Min. - $590.63, Gross.

Superintendent

I ~~accept~~ refuse to receive the above payment.

Signature of Employee

In our presence, the above tender was made to, and refused by, said employee at the time and place of his/her discharge.

Witness

Witness

Floyd H. Daniels
4650 Coliseum Street, #1
Los Angeles, California 90016
August 15, 1977

Telephone: (213) 296-4588

Mr. John S. Wilkens, Manager of Employee Relations
Southern California Rapid Transit District
425 South Main Street
Los Angeles, California 90013

Dear Mr. Wilkens:

On July 15, 1977, I wrote you a letter advising the Southern California Rapid Transit District that I, Floyd H. Daniels, accepts the offer of reinstatement with seniority unimpaired from the date of my hireing; and, that I be treated and extended the same privileges as other employees of the Southern California Rapid Transit District; and, this offer for reinstatement be made effective Sunday, August 14, 1977.

The reinstatement date effective Sunday, August 14, 1977 has now expired; and, I have not received any notification from You and the Southern California Rapid Tranist District. I have reasonable concluded that the thirty (30) days was ample time for You and the Southern California Rapid Transit District to notify Me, Floyd H. Daniels, of my offer for reinstatement as a Bus Operator.

I am now advising You and the Southern California Rapid Transit District to reinstate Me, Floyd H. Daniels, in accordance with the terms of the letter, dated July 15, 1977, within thirty (30) days from the above date of this letter, August 15, 1977, to you; which will be September 14, 1977, with the exception of the following quoted paragraph of the letter:

> "I am hereby requesting Mr. Earl R. Clark, General Chairman, United Transportation Union, to execute in the writing of a letter to you stating the Union's position regarding my offer to accept reinstatement effective Sunday, August 14, 1977; and, a copy of that letter be sent to me for my record."

I hereby withdraw the above quoted paragraph because I have talked with both Mr. Earl R. Clark, General Chairman, and Mr. William C. Haag, Local Chairman, #1565; and, both men have notified me that I, Floyd H. Daniels, should be reinstated in accordance with the terms of my letter to you, dated July 15, 1977. Both Mr. Clark and Mr. Haag have also offered their services to serve as witnesses in my behalf in Court, if necessary. Therefore, it is only fair that I withdraw the above quoted paragraph because if you had talked to me and likewise notified me of my reinstatement; I, Floyd H. Daniels, would have been reinstated and working effective Sunday, August 14, 1977.

I have had the opportunity to visit some of the District's employees who are performing outside employment, and they have showed me their outside employment with pride and dignity. This I could not, and can not do, because of

Page #1 of
Exhibit "F"

You, and the Southern California Rapid Transit District.

I, Floyd H. Daniels, is a natural born Citizen of these United States of America. I had the opportunity of being drafted into the U.S. Navy during World War II; and, I served in those dangerous waters of the great Pacific Ocean helping to preserve and protect this great Country's Independence, and the very precious Liberties and Civil Rights it stand for. I am a Teacher for the Los Angeles School System. As a teacher, I am charged to teach your children, my children, and other children of parents who are living in the Los Angeles Unified School District, the truths about developing their minds and bodies in order to be good United States Citizens in order to enjoy and protect their Civil Rights. I, Floyd H. Daniels, can not effectively teach these truths, if I am not afforded my own Civil Rights; and, do not protect and pursue my Civil Rights.

When You and the Southern California Rapid Transit District failed to reinstate Me, Floyd H. Daniels, to the service of the District as a Bus Operator effective Sunday, August 14, 1977, you have in fact indicated that I, Floyd H. Daniels, is an inferior United States Citizen; and also, an inferior Teacher for the Los Angeles Unified School System. This is immorally wrong, disgraceful, and unlawful on the part of You as Manager of Employee Relations, and the Southern California Rapid Transit District to impose this type of Racial Discrimination on Me, Floyd H. Daniels, because of my Race, a Negro (Black).

Therefore, if I, Floyd H. Daniels, is not reinstated by You and the Southern California Rapid Transit District to the service of Bus Operator as effective of Sunday, August 14, 1977; and, within thirty (30) days from the date of this letter to You, the termination date being Wednesday, September 14, 1977; I, Floyd H. Daniels, have no choice but to secure the services of an Attorney, and file a Complaint in the Federal District Court for reinstatement as a Bus Operator, and for punitive and exemplary damages in the amount of One Million Dollars ($1,000,000.00) tax-free, plus attorney fees, court cost, and for such other and further relief as the Court may deem just.

Yours very truly,

Floyd H. Daniels

Self/
cor Mr. Jack R. Gilstrap, General Manager, Southern California Rapid Transit District.
Mr. Earl R. Clark, General Chairman, United Transportation Union.
Mr. William C. Haag, Local Chairman, #1565, United Transportation Union.
File

Page #2 of
Exhibit "F"

Southern California Rapid Transit District
425 South Main St., Los Angeles, California 90013
Telephone (213) 972-6000

JACK R. GILSTRAP
General Manager

August 16, 1977

Mr. Floyd H. Daniels
4650 Coliseum Street, #1
Los Angeles, California 90016

Dear Mr. Daniels:

This will acknowledge receipt of your letters dated July 15, 1977 and August 15, 1977. Please be advised that there has been no change in the District's position as set forth in my letter to you dated July 12, 1977.

As you did not meet the conditions established by the District and the United Transportation Union for your reinstatement in 1971, you were terminated as an employee of the District at that time.

Your termination in 1971 was final for all purposes at that time and is not subject to reconsideration.

Sincerely,

John S. Wilkens
Manager of Employee Relations

JSW/ju

cc: Mr. Earl R. Clark
Mr. William C. Haag

63. Exhibit "G"